

Internal Revenue Service

Number: **201340009**

Release Date: 10/4/2013

Index Number: 355.00-00, 355.01-00,
368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-147890-12

Date:

April 08, 2013

Legend

Parent =

Distributing 2 =

Distributing 1 =

Controlled =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

LLC 6 =

LLC 7 =

LLC 8 =

LLC 9 =

LLC 10 =

LLC 11 =

LP 1 =

Business A1 =

Business A2 =

Business B	=
State A	=
State B	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
\$ <u>a</u>	=
\$ <u>b</u>	=
\$ <u>c</u>	=
\$ <u>d</u>	=
Property Interests	=

Dear :

This letter responds to your November 5, 2012 request for rulings on certain federal income tax consequences of the proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any of the distributions described below: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is

part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Parent is a State A corporation that has elected to be a real estate investment trust ("REIT") under section 856 since Date 1. Parent's stock is publicly traded, and widely held. Parent owns all of the membership interests of LLC 1, a State B limited liability company ("LLC") treated as an entity disregarded from its owner (a "DRE"), and thus as a branch or division of Parent, for U.S. federal income tax purposes. LLC 1 owns all of the membership interests of LLC 2, LLC 3, and LLC 4, each a State B LLC treated as a DRE (thus, as a branch or division of Parent). LLC 1 owns all of the outstanding limited partnership interests and LLC 2 owns the general partnership interests in LP 1, a State B limited partnership treated as a DRE (thus, as a branch or division of Parent).

LLC 1 owns all of the stock of Distributing 2, a State B corporation that is a taxable REIT subsidiary within the meaning of section 856(l). Parent (directly or through LLC 1) has owned all of the stock in Distributing 2 since Date 3. Distributing 2 is the common parent of an affiliated group of corporations (the "Distributing 2 Group") that file a consolidated return for U.S. federal income tax purposes. Distributing 2 owns all of the membership interests in Distributing 1, a State B LLC, and has owned all of such membership interests since the formation of Distributing 1. Distributing 1 is and has been treated as a corporation for federal income tax purposes since Date 2, and has been a member of the Distributing 2 Group since that date. Distributing 1 owns all of the outstanding interests in LLC 5, LLC 6, LLC 7, and LLC 8, each a State B LLC treated as a DRE (thus, as a branch or division of Distributing 1). LLC 6 owns all of the interests in LLC 9, LLC 10, and LLC 11, each a State B LLC treated as a DRE (thus, as a branch or division of Distributing 1); LLC 6 acquired such interests from LP 1 on Date 4. In addition, Distributing 1 owns (directly or indirectly through DREs) all of the interests in other DREs that are treated as its branches or divisions.

Distributing 2 and the members of its "separate affiliated group" within the meaning of section 355(b)(3)(B) (the "Distributing 2 SAG") directly conduct Business A2 (primarily through Distributing 1, LLC 5, LLC 6, LLC 9, LLC 10, and LLC 11). Distributing 1 and the members of its "separate affiliated group" within the meaning of section 355(b)(3)(B) (the "Distributing 1 SAG") directly conduct Business A1 (primarily through Distributing 1, LLC 5, LLC 6, LLC 9, LLC 10, and LLC 11). The Distributing 2 SAG and Distributing 1 SAG directly conduct Business B (primarily through LLC 7). Controlled will, as a result of the Proposed Transaction, directly engage in Business A1 (through LLC 9, LLC 10, and LLC 11), which is a part of Business A1 presently engaged in by the Distributing 1 SAG.

At the time of the Proposed Transaction, LLC 6 is expected to owe \$a to LP 1 (the “Intercompany Indebtedness”). Of the Intercompany Indebtedness, \$b was incurred by LLC 6 in partial payment to LP 1 for the purchase of all of the outstanding ownership interests in LLC 9, LLC 10, and LLC 11 (the “Installment Notes”) on Date 4. Each Installment Note is evidenced by a promissory note agreement and is secured under a Mortgage and Security Agreement (collectively, the “Security Agreements”) issued respectively by LLC 9, LLC 10, and LLC 11, pursuant to which certain real estate and other assets (the “Mortgaged Property”) were pledged as security for the Installment Notes.

Financial information has been submitted indicating that Business A1, Business A2, and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

For what is represented to be valid business reasons, Parent proposes to undertake the following Proposed Transaction:

- (i) To effect a collateral substitution, LP 1 will release the Mortgaged Property as security for the Installment Notes under the Security Agreements, and LLC 6 will pledge other assets to serve as new collateral for the Installment Notes under the Security Agreements (the “Collateral Substitution”).
- (ii) Distributing 1 will contribute \$d to a newly-formed corporation (“Controlled”).
- (iii) Distributing 2 will borrow \$c from a third-party lender (the “Borrowing”).
- (iv) LLC 6 will distribute all of the membership interests in LLC 9, LLC 10, and LLC 11 to Distributing 1.
- (v) LLC 6 and other DREs owned by Distributing 1 will distribute the Property Interests to Distributing 1.
- (vi) Distributing 1 will contribute (together with step (ii) above, the “First Contribution”) all of the membership interests in LLC 9, LLC 10, and LLC 11 and the Property Interests (and might contribute all of its membership interests in LLC 8) to Controlled. Controlled will issue all of its common stock and 80 percent or more of its single class of non-voting preferred stock (the “Preferred Stock”) to Distributing 1 in exchange for the First Contribution.
- (vii) Controlled will issue additional shares of its Preferred Stock (comprising in the aggregate 20 percent or less of the total outstanding shares of its Preferred

Stock) to approximately 120 new shareholders, in exchange for cash (the “Controlled Preferred Stock Issuance”).

- (viii) Controlled will elect to be treated as a REIT effective as of the first date it qualifies as a REIT.
- (ix) Distributing 1 will distribute all of the shares of Controlled common stock and all of its shares of the Controlled Preferred Stock to Distributing 2 (the “First Distribution”).
- (x) Distributing 2 will contribute the proceeds of the Borrowing to Controlled (the “Second Contribution”).
- (xi) Distributing 2 will distribute all of the shares of Controlled common stock and all of its shares of the Controlled Preferred Stock to LLC 1 (the “Second Distribution”).
- (xii) By the close of its first taxable year as a REIT, Controlled will distribute to LLC 1 an amount of cash equal to what Parent reasonably determines is necessary to purge Controlled’s earnings and profits from non-REIT years in order to comply with section 857(a)(2)(B) (the “Purging Distribution”).

REPRESENTATIONS

The First Contribution and the First Distribution

Parent has made the following representations regarding the First Contribution and the First Distribution:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after the First Distribution will not constitute stock or securities.
- (b) No part of the consideration distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) The five years of financial information submitted on behalf of Business A1 (as conducted by the Distributing 1 SAG) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (d) The five years of financial information submitted on behalf of Business B (as conducted by the Distributing 1 SAG immediately before the Proposed

Transaction) is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.

- (e) Neither Business A1 to be conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the First Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the First Distribution, the Distributing 2 SAG (and, subsequent to Date 2, the Distributing 1 SAG) will have been the principal owner of the goodwill, if any, and significant assets of Business A1. Following the First Distribution, Controlled (directly or through one or more DREs) will be the principal owner of the goodwill, if any, and significant assets of Business A1.
- (f) Neither Business B conducted by the Distributing 1 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the First Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the First Distribution, the Distributing 2 SAG (and, subsequent to Date 2, the Distributing 1 SAG), will have been the principal owner of the goodwill, if any, and significant assets of Business B. Following the First Distribution, the Distributing 1 SAG will continue to be the principal owner of the goodwill, if any, and significant assets of Business B.
- (g) Following the First Distribution, the Distributing 1 SAG will continue the active conduct of Business B, independently and with its separate employees.
- (h) Following the First Distribution, Controlled will continue the active conduct of Business A1, independently and with its separate employees, and will continue to use employees of related entities consistent with past practice.
- (i) The First Distribution will be carried out to facilitate the Second Distribution.
- (j) The First Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.
- (k) The total adjusted basis and fair market value of the assets transferred to Controlled in the First Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization. It is expected that Controlled will assume liabilities related to Business A1 in connection with the First Contribution.

- (l) Any liabilities assumed (as determined under section 357(d)) by Controlled in the First Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (m) The total fair market value of the assets transferred to Controlled in the First Contribution will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the exchange; (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or extinguished in connection with the exchange; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (n) Distributing 1 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the First Distribution.
- (o) No intercorporate debt will exist between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled at the time of, or after, the First Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business or as a result of the Proposed Transaction.
- (p) Payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (q) No two parties to the First Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (r) For purposes of section 355(d), immediately after the First Distribution, no person (determined after applying section 355(d)(7)) will hold membership interests possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 membership interests entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 membership interests, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Distribution.
- (s) For purposes of section 355(d), immediately after the First Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by

purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Distribution or (ii) attributable to distributions on Distributing 1 membership interests or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the First Distribution.

- (t) The First Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly membership interests or stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of any such corporation).
- (u) Immediately after the transaction (as defined in section 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 1 or Controlled, (2) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) neither Distributing 1 nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (v) The Controlled Preferred Stock will not constitute “nonqualified preferred stock” within the meaning of section 351(g)(2).
- (w) The Collateral Substitution described in step (i) above will not constitute a significant modification (within the meaning of Treas. Reg. § 1.1001-3(b)) of the Installment Notes.

The Second Contribution and the Second Distribution

Parent has made the following representations regarding the Second Contribution and the Second Distribution:

- (x) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) after the Second Distribution will not constitute stock or securities.
- (y) No part of the consideration to be distributed by Distributing 2 will be received by Parent (through LLC 1) as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

- (z) The five years of financial information submitted on behalf of Business A1 as conducted by the Distributing 2 SAG, and as to be conducted by Controlled, is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (aa) The five years of financial information submitted on behalf of Business B conducted by the Distributing 2 SAG is representative of the present operations of such business, and there have been no substantial operational changes in such business since the date of the last financial statements submitted.
- (bb) Neither Business A1 to be conducted by Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Second Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Second Distribution, the Distributing 2 SAG will have been the principal owner of the goodwill, if any, and significant assets of Business A1. Following the Second Distribution, Controlled (directly or through one or more DREs) will be the principal owner of the goodwill, if any, and significant assets of Business A1.
- (cc) Neither Business B conducted by the Distributing 2 SAG nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Second Distribution in a transaction in which gain or loss was recognized in whole or in part. Throughout the five-year period preceding the Second Distribution, the Distributing 2 SAG will have been the principal owner of the goodwill, if any, and significant assets of Business B. Following the Second Distribution, the Distributing 2 SAG will continue to be the principal owner of the goodwill, if any, and significant assets of Business B.
- (dd) Following the Second Distribution, the Distributing 2 SAG will continue the active conduct of Business B, independently and with its separate employees.
- (ee) Following the Second Distribution, Controlled will continue the active conduct of Business A1, independently and with its separate employees, and will continue to use employees of related entities consistent with past practice.
- (ff) The Second Distribution will be carried out to (i) improve management fit and focus for Business A1, Business B, and the other businesses conducted by the Distributing 2 SAG, and (ii) align the businesses within Parent's chosen structure, thereby facilitating Parent's continuing REIT status. The Second Distribution is motivated in whole or substantial part by these corporate business purposes.

- (gg) The Second Distribution will not be used principally as a device for the distribution of earnings and profits of Distributing 2 or Controlled.
- (hh) No liabilities will be assumed (as determined under section 357(d)) by Controlled in the Second Contribution.
- (ii) The total amount of the cash transferred to Controlled in the Second Contribution will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the exchange; (ii) the amount of any liabilities owed to Controlled by Distributing 2 that are discharged or extinguished in connection with the exchange; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (jj) Distributing 2 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Second Distribution.
- (kk) No intercorporate debt will exist between Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Second Distribution other than accounts payable arising in the ordinary course of business.
- (ll) Payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (mm) No two parties to the Second Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (nn) For purposes of section 355(d), immediately after the Second Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Distribution.
- (oo) For purposes of section 355(d), immediately after the Second Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of

shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Second Distribution.

- (pp) The Second Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of any such corporation).
- (qq) Immediately after the transaction (as defined in section 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing 2 or Controlled, (2) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) neither Distributing 2 nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (rr) The amount of money Controlled will distribute to Parent in step (xii) of the Proposed Transaction will be based on the estimated amount of earnings and profits allocated to Controlled in the First Distribution and Second Distribution. There is no plan or intention for Controlled to distribute any amount in excess of what Parent reasonably determines is necessary to purge its earnings and profits accumulated in any non-REIT year (within the meaning of section 857(a)(2)(B)). Parent will treat the entire distribution as out of Controlled's earnings and profits.
- (ss) The Controlled Preferred Stock will not constitute "nonqualified preferred stock" within the meaning of section 351(g)(2).
- (tt) The Collateral Substitution described in step (i) above will not constitute a significant modification (within the meaning of Treas. Reg. § 1.1001-3(b)) of the Installment Notes.

RULINGS

The First Contribution and the First Distribution

- (1) The First Contribution and the First Distribution, taken together, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing 1 and

Controlled will each be “a party to the reorganization” within the meaning of section 368(b).

- (2) Distributing 1 will not recognize any gain or loss on its transfer of assets to Controlled in exchange for Controlled stock and Controlled’s assumption of its liabilities in the First Contribution (sections 361(a) and 357(a)).
- (3) Controlled will not recognize any gain or loss on its receipt of assets from Distributing 1 in exchange for Controlled stock and Controlled’s assumption of liabilities in the First Contribution (section 1032(a)).
- (4) Controlled’s basis in each asset received from Distributing 1 in the First Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the First Contribution (section 362(b)).
- (5) Controlled’s holding period in each asset received from Distributing 1 in the First Contribution will include the period during which Distributing 1 held that asset (section 1223(2)).
- (6) Distributing 1 will not recognize any gain or loss upon its distribution of Controlled stock to Distributing 2 in the First Distribution (section 361(c)(1)).
- (7) Distributing 2 will not recognize any gain or loss (and will not include any amount in income) on its receipt of shares of Controlled stock from Distributing 1 in the First Distribution (section 355(a)(1)).
- (8) Distributing 2’s basis in its Distributing 1 membership interests and shares of Controlled stock immediately after the First Distribution will be the same as its basis in its Distributing 1 membership interests immediately before the First Distribution, allocated between the membership interests of Distributing 1 and the Controlled in proportion to the fair market value of each immediately following the First Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (9) Distributing 2’s holding period in the Controlled stock it will receive in the First Distribution will include the holding period of the Distributing 1 membership interests with respect to which the First Distribution is made, provided Distributing 2 held its Distributing 1 membership interests as a capital asset on the date of the First Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-80(a)(2).

- (11) The First Contribution will be a conversion transaction within the meaning of Treas. Reg. § 1.337(d)-7(a)(2)(ii), and Controlled will be subject to tax on the net built-in gain, if any, in the property transferred to it in the First Contribution under the rules of section 1374 and Treas. Reg. § 1.337(d)-7. Treas. Reg. § 1.337(d)-7(b)(1)(i).

The Second Contribution and the Second Distribution

- (12) Distributing 2 will not recognize any gain or loss on its distribution of Controlled stock to Parent in the Second Distribution (section 361(c)(1)).
- (13) Parent will not recognize any gain or loss (and will not include any amount in income) on its receipt of shares of Controlled stock from Distributing 2 in the Second Distribution (section 355(a)(1)).
- (14) Parent's basis in its Distributing 2 stock and shares of Controlled stock immediately after the Second Distribution will be the same as its basis in its Distributing 2 stock immediately before the Second Distribution, allocated between the Distributing 2 stock and Controlled stock in proportion to the fair market value of each immediately following the Second Distribution in accordance with Treas. Reg. § 1.358-2(a)(2) (section 358(b)(2) and (c)).
- (15) Parent's holding period in the Controlled stock it will received in the Second Distribution will include the holding period of the Distributing 2 stock with respect to which the Second Distribution is made, provided Parent held its Distributing 2 stock as a capital asset on the date of the Second Distribution (section 1223(1)).
- (16) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-80(a)(2).
- (17) For U.S. federal income tax purposes, the Purging Distribution will be treated as a distribution by Controlled to Parent, to which section 301 applies.

CAVEATS

No opinion is expressed about the federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether any distribution satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);

- (ii) Whether any distribution is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether any distribution and any acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);
- (iv) Whether the Collateral Substitution described in Step (i) above constitutes a significant modification of a debt instrument under Treas. Reg. § 1.1001-3(b);
- (v) The Controlled Preferred Stock Issuance described in Step (vii) above;
- (vi) Whether Parent, Controlled or any entity that purports to be a REIT qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code;
- (vii) Whether Distributing 2 qualifies as a Taxable REIT Subsidiary within the meaning of section 856(l);
- (viii) Whether the Purging Distribution qualifies as a distribution described in section 856(c)(3)(D); and
- (ix) Whether the Purging Distribution eliminates Controlled's earnings and profits from non-REIT years as required by section 856(a)(2)(B).

PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Maury Passman
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Corporate)

cc: